

FILED

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

2 A Limited Liability Partnership

3 Including Professional Corporations

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2013 OCT 23 PM 12:36

U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

12 Attorneys for Plaintiff

13 HANS DRAKE INTERNATIONAL
14 CORPORATION

15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

17 HANS DRAKE INTERNATIONAL
18 CORPORATION, a California
19 corporation,

20 Plaintiff,

21 v.

22 INTEK ADVANCED BODY
23 SOLUTIONS, a California entity,
24 BAKER ABDELGAWAD, an
25 individual, and DOES 1-10, inclusive,

26 Defendants.

27 Case No. SACV13 - 01659 ABC (DFMx)

28 **COMPLAINT FOR:**

1. **UNFAIR COMPETITION AND
2. TRADEMARK INFRINGEMENT
3. UNFAIR COMPETITION [Cal.
4. UNFAIR COMPETITION [California Common Law];
Bus. & Prof. Code §§ 17200 *et seq.*];
[California Common Law]; and**

DEMAND FOR JURY TRIAL

29 Plaintiff Hans Drake International Corp. ("Hans Drake"), for its
30 Complaint against defendants Intek Advanced Body Solutions ("Intek"), Baher
31 Abdelgawad ("Abdelgawad"), and Does 1-10 (collectively "Defendants") alleges as
32 follows:

THE PARTIES

1. Plaintiff Hans Drake is a California corporation having its principal place of business at 17742 Mitchell, Suite B, Irvine, California 92614.

2. Upon information and belief, defendant Intek is a California entity having its principal place of business at 15556 Dupont Avenue, Chino, California 91710.

7 3. Upon information and belief, defendant Abdelgawad is an
8 individual with offices at 15556 Dupont Avenue, Chino, California 91710. Upon
9 information and belief, Abdelgawad is the principal operator of Intek and personally
10 makes decisions regarding, participates in, directs, exercises control over, and
11 benefits from Intek's infringing activities as alleged herein.

12 4. Hans Drake is unaware at this time of the true names and
13 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore
14 sues these Defendants by these fictitious names. Hans Drake will seek leave of the
15 Court to amend this Complaint to allege their true names and capacities when the
16 same have been ascertained or at the time of trial.

17 5. Hans Drake is informed and believes and upon that basis alleges
18 that at all times herein mentioned, each of the Defendants was the agent, servant, or
19 employee of each of the other Defendants, and in doing the things hereinafter
20 alleged, was acting in the course and scope of such agency, service and
21 employment, and with the permission and consent of his, her or its co-Defendants.

NATURE AND STATUTORY BASIS OF THE ACTION

23 6. This action seeks remedy for unfair competition and false
24 designation of origin under the federal Lanham Act, 15 U.S.C. section 1125(a) (First
25 Claim for Relief); trademark infringement under California common law (Second
26 Claim for Relief); unfair competition under California Business and Professions
27 Code sections 17200 *et seq.* (Third Claim for Relief); and unfair competition under
28 California common law (Fourth Claim for Relief).

JURISDICTION AND VENUE

2 7. This Course has personal jurisdiction over Defendants because,
3 upon information and belief: (i) Defendants do business and/or actively solicit
4 business in California; (ii) Defendants have continuous and ongoing business
5 contacts with residents of California; (iii) Defendants have intentionally engaged in
6 acts targeted at California that have caused harm within California; and/or (iv)
7 Defendants have purposely availed themselves of the privilege of conducting
8 business in California.

9 8. This Court has subject-matter jurisdiction over this action
10 pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 as part of this action
11 is based on the federal Lanham Act. This Court has supplemental jurisdiction over
12 Hans Drake's California statutory and common law claims pursuant to 28 U.S.C. §
13 1367(a) in that the state and common law claims alleged herein are based on the
14 same operative facts, and the Court's exercise of jurisdiction over the pendent state
15 law claims will promote judicial economy, convenience, and fairness to the parties.

16 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
17 1391(b) and (c) in that, upon information and belief, Defendants reside and/or
18 regularly conduct business in this district.

FACTUAL BACKGROUND

20 | A. Plaintiff's Business and Valuable Intellectual Property

21 10. Hans Drake is a leading developer and retailer of fitness workout
22 products, including scientifically-backed, innovative and effective dietary
23 supplements.

24 11. Among other successful product lines, Hans Drake developed
25 and sells a thermogenic fat-burning dietary supplement under the name **DFINE 8**
26 (the “Mark”). Hans Drake has extensively used the **DFINE 8** mark in commerce
27 since at least as early as January 31, 2007 in connection with its dietary
28 supplements.

1 12. As a company that depends upon both the quality of its products
2 and the reliability of its brand, Hans Drake has spent substantial sums securing and
3 protecting its intellectual property interests.

4 13. On April 26, 2013, Hans Drake filed a trademark application
5 Serial No. 85/916,505 for the **DFINE 8** mark, covering “dietary and nutritional
6 supplements” in International Class 5.

7 14. Hans Drake has also extensively advertised and promoted the
8 **DFINE 8** mark since at least as early as January 31, 2007. For example, Hans
9 Drake prominently displays the Mark, and provides information about the
10 company’s **DFINE 8**-branded dietary supplements on its website at
11 www.muscleworks.com.

12 15. Over the years, Hans Drake has expended substantial amounts of
13 time, effort and money to ensure that the consuming public associates the **DFINE 8**
14 mark with its dietary supplement products. As a result of this time, effort and
15 money invested, Hans Drake and the **DFINE 8** mark have achieved a reputation for
16 excellence in the dietary and nutritional supplement market. Hans Drake enjoys
17 substantial demand and goodwill for its goods marketed under the **DFINE 8** mark.
18 Accordingly, the Mark is a significant asset of Hans Drake’s business.

19 16. The **DFINE 8** mark is strong and distinctive when used in
20 connection with Hans Drake’s dietary and nutritional supplements.

21 17. By virtue of the extensive scope of consumer sales made under
22 the **DFINE 8** mark, and the substantial sums spent to promote the Mark, the Mark
23 has also acquired secondary meaning in the minds of the relevant purchasing public.

24 18. The **DFINE 8** mark uniquely distinguishes goods originating
25 from Hans Drake from those offered by others. Hans Drake has built up
26 incalculable goodwill and value in the **DFINE 8** mark.

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1 **B. Defendants' Business and Unlawful Conduct**

2 19. Upon information and belief, defendant Intek is a retailer and
3 distributor of fitness enhancement products that sells various dietary products,
4 including a thermogenic fat-burning dietary supplement.

5 20. Upon information and belief, Intek is a competitor of Hans
6 Drake and offers similar dietary and nutritional supplements, and specifically, a
7 thermogenic fat-burning supplement, under a trademark confusingly similar to Hans
8 Drake's mark, namely, **DEFINE** (the "Infringing Mark").

9 21. Upon information and belief, Intek began using the Infringing
10 Mark in connection with dietary supplements, and specifically, a thermogenic fat-
11 burning supplement, after Hans Drake's first use of the Mark for similar dietary
12 products.

13 22. Upon information and belief, Intek advertises its dietary
14 supplements through a variety of marketing channels that overlap with Hans
15 Drake's marketing channels, including without limitation on the Internet.

16 23. Upon information and belief, Intek is using the Infringing Mark
17 with the intent to ride the coattails of Hans Drake's well-known **DFINE 8** mark.

18 24. On September 17, 2013, Hans Drake, through its counsel, sent a
19 letter to Mr. Baher Abdelgawad, principal of Intek, informing him of the
20 infringement and demanding that Intek cease and desist use of the Infringing Mark,
21 including to cease and desist from manufacturing and/or selling dietary supplements
22 bearing the Infringing Mark. A true and correct copy of Hans Drake's September
23 17, 2013 correspondence is attached as **Exhibit A**.

24 25. On or about September 20, 2013, Intek's counsel contacted
25 counsel for Hans Drake and requested an extension of time to respond to Hans
26 Drake's letter. Hans Drake's counsel granted Intek an extension to respond to its
27 demands through October 4, 2013.

28

26. Intek failed to provide a substantive response to, or to otherwise comply with the terms of Hans Drake's cease and desist letter by the extension date.

27. Upon information and belief, Intek continues to use the Infringing Mark, including without limitation by making, having made, selling, offering to sell, and/or distributing dietary supplements bearing the Infringing Mark.

28. Upon information and belief, as a result of Intek's use of a highly similar mark for competing dietary supplements, consumers who encounter Intek's products are likely to be confused as to their source, or as to their connection or affiliation with Hans Drake and its dietary supplements offered under the **DFINE 8** mark.

FIRST CLAIM FOR RELIEF

Unfair Competition and False Designation of Origin Against All Defendants

[Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)]

15 29. Hans Drake realleges and incorporates by reference the
16 allegations set forth in paragraphs 1 through 28, *supra*, as though fully set forth
17 herein.

18 30. Defendants' wrongful use of the Infringing Mark in connection
19 with their dietary supplements is likely to cause confusion, mistake and deception as
20 to the affiliation, connection, and association of Defendants with Hans Drake and/or
21 as to the origin, sponsorship and approval of Defendants' dietary supplement goods.

22 31. Defendants use the Infringing Mark in connection with
23 commercial advertising and/or promotion of Defendants' dietary supplements,
24 including without limitation via Defendants' website located at
25 www.inteknutrition.com. Such use of the Infringing Mark is likely to cause
26 confusion, mistake and deception as to the nature, characteristics, and quality of
27 Defendants' goods.

1 32. Defendants' acts have caused, and, unless restrained by this
2 Court, will continue to cause Hans Drake and the public to suffer great and
3 irreparable damage and injury through, *inter alia*, (a) likelihood of confusion,
4 mistake and deception among the relevant purchasing public and trade as to the
5 source of Defendants' goods; and (b) the loss of Hans Drake's valuable goodwill
6 and business reputation symbolized by the **DFINE 8** mark.

7 33. Hans Drake is entitled to recover from Defendants the damages it
8 has sustained and will sustain as a result of Defendants' wrongful conduct as alleged
9 herein. Hans Drake is further entitled to recover from Defendants the gains, profits
10 and advantages that they have obtained as a result of such wrongful conduct. Hans
11 Drake at present is unable to ascertain the full extent of its damages, or the extent of
12 the gains, profits and advantages that Defendants have obtained by reason of the
13 wrongful conduct alleged herein.

14 34. Hans Drake has no adequate remedy at law. Unless Defendants
15 are preliminarily and permanently enjoined from committing these unlawful acts as
16 set forth above, including the unauthorized use of the **DFINE** mark in commerce,
17 Hans Drake will continue to suffer irreparable harm. Pursuant to 15 U.S.C. § 1116,
18 Hans Drake is entitled to an injunction restraining Defendants, their officers, agents
19 and employees, and all persons acting in concert with them, from engaging in any
20 further such acts of infringement in violation of the Lanham Act.

21 35. Defendants' wrongful use of the Infringing Mark was and
22 continues to be deliberate, willful, and fraudulent and thus, constitutes a knowing
23 use of a mark confusingly similar to the **DFINE 8** mark. Hans Drake is therefore
24 entitled to recover its actual damages, enhanced damages, its attorneys' fees and
25 costs incurred in this action, and prejudgment interest.

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SECOND CLAIM FOR RELIEF

Trademark Infringement Against All Defendants

[California Common Law]

4 36. Hans Drake realleges and incorporates by reference the
5 allegations set forth in paragraphs 1 through 35, *supra*, as though fully set forth
6 herein.

7 37. Defendants' actions alleged herein constitute infringement of
8 Hans Drake's common law rights to the **DFINE 8** trademark.

9 38. Hans Drake has been and will continue to be irreparably harmed
10 by Defendants' infringing acts and unless Defendants are restrained from continuing
11 their infringing acts, the harm to Hans Drake will increase.

12 39. Defendants' infringement of Hans Drake's rights is and has been
13 willful.

14 40. Hans Drake has no adequate remedy at law for Defendants'
15 wrongful acts.

THIRD CLAIM FOR RELIEF

Unfair Competition Against All Defendants

[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

19 41. Hans Drake rellages and incorporates by reference the
20 allegations set forth in paragraphs 1 through 40, *supra*, as though fully set forth
21 herein.

22 42. Upon information and belief, the unlawful conduct of
23 Defendants described herein has had a substantial effect on commerce, and
24 constitutes unlawful, unfair, and fraudulent business practices in violation of Section
25 17200, *et seq.*, of the California Business and Professions Code.

26 43. Upon information and belief, Defendants willfully intended to
27 trade on the strength, reputation, and goodwill of the **DFINE 8** trademark, to

1 mislead the public with wrongful use of the Infringing Mark, and to cause injury to
2 Hans Drake.

3 44. As a direct and proximate result of Defendants' unlawful acts as
4 described herein, Hans Drake has suffered and will continue to suffer injury to its
5 business, goodwill and property.

6 45. Hans Drake has no adequate remedy at law. Unless Defendants
7 are preliminarily and permanently enjoined from committing the unlawful acts
8 described herein, Hans Drake will continue to suffer irreparable harm. Hans Drake
9 is entitled, pursuant to California Business and Professions Code sections 17203 and
10 17535, to an injunction restraining Defendants, their officers, agents and employees,
11 and all persons acting in concert with them, from engaging in any further such acts
12 of unfair competition in violation of the California Business and Professions Code,
13 as well as to restitution and disgorgement of Defendants' profits.

14 **FOURTH CLAIM FOR RELIEF**

15 **Unfair Competition Against All Defendants**

16 **[California Common Law]**

17 46. Hans Drake realleges and incorporates by reference the
18 allegations set forth in paragraphs 1 through 45, *supra*, as though fully set forth
19 herein.

20 47. Defendants' acts as described herein constitute unfair
21 competition in violation of the common law of the state of California.

22 48. As a direct and proximate result of Defendants' unlawful acts as
23 described herein, Hans Drake has suffered and will continue to suffer injury.

24 49. Hans Drake has no adequate remedy at law. Unless Defendants
25 are preliminarily and permanently enjoined from committing the unlawful acts
26 described herein, Hans Drake will continue to suffer irreparable harm.

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1 50. As a result of Defendants' acts as described herein, Defendants
2 have been unjustly enriched at Hans Drake's expense and Hans Drake has suffered a
3 competitive injury and damages in an amount to be proven at trial.

4 51. Upon information and belief, Defendants acted with oppression,
5 fraud, malice and willfully intended to trade on the strength, reputation and goodwill
6 of the **DFINE 8** trademark, to mislead the purchasing public, and to cause injury to
7 Hans Drake and thus, Hans Drake is entitled to punitive damages.

PRAYER FOR RELIEF

9 WHEREFORE, Plaintiff Hans Drake prays for judgment against
10 Defendants as follows:

11 1. That Defendants be held liable for infringement of the **DFINE 8**
12 trademark in violation of the Lanham Act, 15 U.S.C. § 1125(a) and California
13 common law, and unfair competition in violation of California common law and the
14 California Business & Professions Code §§ 17200 *et seq.*, as alleged herein.

15 2. That Defendants, and their officers, employees, agents, servants,
16 attorneys, and representatives, and all other persons, firms, or corporations in active
17 concert or participation with them, be preliminarily and thereafter permanently
18 enjoined and restrained, pursuant to the Court's inherent equitable powers and
19 pursuant to 15 U.S.C. § 1116 from:

20 (a) promoting, providing, or selling any goods under the
21 **DEFINE** trademark or any colorable imitation thereof, or any other phrase, term, or
22 logo that is likely to cause confusion with Hans Drake or its **DFINE 8** mark;

23 (b) using in commerce, or facilitating the use in commerce of
24 the **DEFINE** trademark or any other phrase, term, mark, trade name, logo or design
25 that falsely represents that, or is likely to confuse, mislead, or deceive purchasers,
26 Hans Drake's customers, or members of the public that goods advertised, provided,
27 sold and/or offered for sale by Defendants originate from Hans Drake, or that such

1 goods have been sponsored, approved, or licensed by or associated with Hans Drake
2 or are in some way connected or affiliated with Hans Drake;

3 (c) engaging in any acts of federal, state or common law
4 trademark infringement, false designation of origin, or unfair competition that would
5 damage or injure Hans Drake; and

6 (d) participating or assisting in any of the above activities.

7 3. That Defendants, pursuant to 15 U.S.C. § 1116(a), be required to
8 file with the Court and to serve on Hans Drake within thirty (30) days after service
9 of an injunction order as requested herein, a report in writing under oath setting
10 forth in detail the manner and form in which they have complied with the Court's
11 order.

12 4. That an accounting be ordered of all of the profits realized by
13 Defendants, or others acting in concert or participation with them, from Defendants'
14 unauthorized use and infringement of the **DFINE 8** mark.

15 5. That Defendants be required to account for and pay to Hans
16 Drake all gains, profits, and advantages derived from their acts of infringement and
17 other unlawful conduct, as alleged herein.

18 6. That all gains, profits, and advantages derived by Defendants
19 from their acts of infringement and other unlawful conduct alleged herein be
20 deemed to be in constructive trust for the benefit of Hans Drake.

21 7. That judgment be entered against Defendants for Hans Drake's
22 actual damages as a result of Defendants' acts of infringement and other unlawful
23 conduct alleged herein, and for any additional profits attributable to Defendants'
24 wrongful conduct, according to proof.

25 8. That Defendants' unlawful conduct as alleged herein be deemed
26 a willful violation of Hans Drake's intellectual property rights.

27 9. That the Court declare this an exceptional case.

1 10. That Hans Drake's actual damages be trebled pursuant to 15
2 U.S.C. § 1117(a).

3 11. That Hans Drake recover its reasonable attorneys' fees pursuant
4 to 15 U.S.C. § 1117(a).

5 12. That Hans Drake be awarded punitive and exemplary damages
6 pursuant to California common law.

7 13. That Hans Drake recover the costs of this suit.

8 14. That Hans Drake be granted pre-judgment and post-judgment
9 interest on the damages caused by Defendants.

10 15. That Hans Drake be granted such other and further relief as the
11 Court deems just and proper.

DEMAND FOR JURY TRIAL

13 Pursuant to Federal Rule of Civil Procedure 38(b), Hans Drake hereby
14 demands a trial by jury of any and all issues triable of right by a jury.

16 | Dated: October 23, 2013

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By

CARLO F. VAN DEN BOSCH

Attorneys for Plaintiff
HANS DRAKE INTERNATIONAL
CORPORATION

Exhibit A

Sheppard Mullin

Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92610-4703
(714) 513-5110 (main)
(714) 511-5110 (fax)
www.sheppardmullin.com

714.424.8215 direct
cvandenbosch@sheppardmullin.com

September 17, 2013

File Number: Hans Drake – Misc. IP

VIA FEDEX

Mr. Baher Abdelgawad
Intek Advanced Body Solutions
15556 Dupont Avenue
Chino, California 91710

Re: Infringement of Hans Drake International's DFINE Trademark

Dear Mr. Abdelgawad:

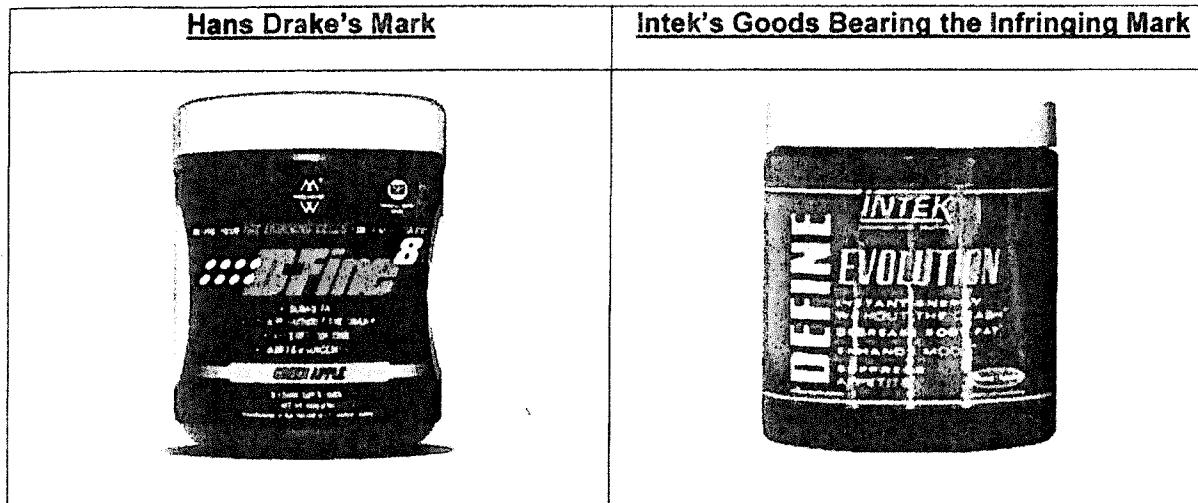
We represent Hans Drake International, Corp. ("Hans Drake") in connection with trademark enforcement matters. Hans Drake is a leader in the market of fitness enhancement products, and has spent significant resources to provide consumers with scientifically-backed, innovative and effective product formulas. Among other highly successful product lines, Hans Drake sells a thermogenic fat-burning dietary supplement under the name **DFINE8™**.

In connection with this product line, our client owns a federal trademark application (Serial No. 85/916,505) for the mark **DFINE8** (the "Mark"). Hans Drake has used the Mark in commerce since at least as early as January 31, 2007. The Mark has appeared in numerous print and online advertising campaigns, and is prominently featured on Hans Drake's website at www.muscleworks.com. Hans Drake has expended a significant amount of time, money and resources to develop the strong goodwill associated with its Mark. As a result, the Mark has become a well-known identifier of Hans Drake's business, a symbol of its quality, and a significant asset of its business.

We recently discovered that Intek Advanced Body Solutions ("Intek") is selling a competing thermogenic fat-burning dietary supplement under the near-identical mark **DEFINE** (the "Infringing Mark"). Furthermore, your product packaging as shown below appears willfully designed to ride the coattails of our client's brand identity, because both products regularly appear in close proximity within the same stores.

SheppardMullin

Mr. Baher Abdalgawad
September 17, 2013
Page 2



Intek's use of the Infringing Mark in a highly competitive manner is likely to confuse consumers and constitutes trademark infringement and unfair competition in violation of federal, state and common law, including without limitation the federal Lanham Act. See, e.g., 15 U.S.C. §§ 1114 & 1125(a).

Intek's infringement entitles Hans Drake to injunctive and monetary relief, including an accounting and surrender of any profits from the infringing conduct. See 15 U.S.C. § 1117. Furthermore, our client initially informed Intek of its infringement of the DFINE8 mark earlier this year, thus putting Intek on notice of its infringing conduct since receipt of that initial letter dated January 22, 2013. If Intek does not voluntarily cease its use of the Infringing Mark, Hans Drake will seek enhanced damages, including treble damages, punitive damages and recovery of Hans Drake's attorneys' fees, in light of Intek's willful continuation of the infringement. *Id.*

Hans Drake is prepared to take all necessary steps to vigorously enforce its rights in the Mark through legal action unless Intek responds in writing within five (5) days and agrees to:

1. permanently cease any and all use of the Infringing Mark, any mark that incorporates the **DEFINE** mark, and/or any colorable imitation(s) thereof;
2. permanently cease any and all association or comparison with Hans Drake or its goods that might lead to a likelihood of consumer confusion; and
3. In relation to your sales of supplements bearing the Infringing Mark, identify the following:
 - a. the manufacturing source for the goods;

SheppardMullin

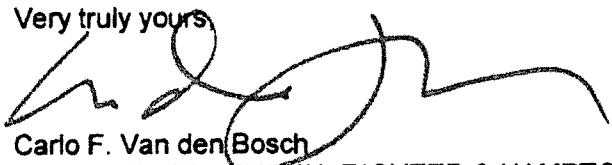
Mr. Baher Abdelgawad
September 17, 2013
Page 3

- b. the number of units manufactured;
- c. the number of units sold by Intek or related entities;
- d. the retailers that carry and/or sell or sold the goods;
- e. the dates and locations of sales of the units; and
- f. the number of units remaining in inventory.

This letter is not intended to contain a complete statement of fact with respect to the subject matter hereof, and Hans Drake does not waive any legal or equitable rights or remedies available to it, all of which are expressly reserved.

We look forward to hearing from you promptly.

Very truly yours,



Carlo F. Van den Bosch
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH 410176085 1
cc: Gazal Pour-Moezzi, Esq.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Audrey B. Collins and the assigned Magistrate Judge is Douglas F. McCormick.

The case number on all documents filed with the Court should read as follows:

SACV13-01659 ABC (DFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

October 23, 2013

Date

By Maria Barr

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

| | | | | | |
|---|---|---|---|--|---|
| I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) HANS DRAKE INTERNATIONAL CORPORATION, a California corporation | | DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) INTEK ADVANCED BODY SOLUTIONS, a California entity; BAKER ABDELGAWAD, an individual; and DOES 1-10, inclusive | | | |
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.) CARLO F. VAN DEN BOSCH, Cal. Bar No. 185207 GAZAL J. POUR-MOEZZI, Cal. Bar No. 285932 SHEPPARD MULLIN RICHTER & HAMPTON LLP 650 Town Center Drive, 4th Floor, Costa Mesa, CA 92626 Telephone: (714) 513-5100 | | (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.) | | | |
| II. BASIS OF JURISDICTION (Place an X in one box only.) | | III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) | | | |
| <input type="checkbox"/> 1. U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) | Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 | | |
| <input type="checkbox"/> 2. U.S. Government Defendant | <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) | Citizen of Another State | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 | | |
| | | Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 Foreign Nation PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 | | |
| IV. ORIGIN (Place an X in one box only.) | | 6. Multi-District Litigation | | | |
| <input checked="" type="checkbox"/> 1. Original Proceeding | <input type="checkbox"/> 2. Removed from State Court | <input type="checkbox"/> 3. Remanded from Appellate Court | <input type="checkbox"/> 4. Reinstated or Reopened <input type="checkbox"/> 5. Transferred from Another District (Specify) <input type="checkbox"/> | | |
| V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) | | | | | |
| CLASS ACTION under F.R.Cv.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | MONEY DEMANDED IN COMPLAINT: \$ _____ | | | |
| VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Unfair competition and false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a), trademark infringement and unfair competition under California common law, unfair competition under Cal. Bus. & Prof. Code §§ 17200 et seq. | | | | | |
| VII. NATURE OF SUIT (Place an X in one box only). | | | | | |
| OTHER STATUTES | CONTRACT | REAL PROPERTY CONT. | IMMIGRATION | PRISONER PETITIONS | PROPERTY RIGHTS |
| <input type="checkbox"/> 375 False Claims Act | <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 462 Naturalization Application | Habeas Corpus: | <input type="checkbox"/> 820 Copyrights |
| <input type="checkbox"/> 400 State Reapportionment | <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 830 Patent |
| <input type="checkbox"/> 410 Antitrust | <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL PROPERTY | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input checked="" type="checkbox"/> 840 Trademark |
| <input type="checkbox"/> 430 Banks and Banking | <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 530 General | <input type="checkbox"/> 535 Death Penalty | SOCIAL SECURITY |
| <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. | <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 315 Airplane | OTHER: | | <input type="checkbox"/> 861 HIA (1395f) |
| <input type="checkbox"/> 460 Deportation | <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> Product Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 862 Black Lung (923) | |
| <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. | <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 863 DIWC/DIWV (405 (g)) | |
| <input type="checkbox"/> 480 Consumer Credit | <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits | <input type="checkbox"/> 330 Fed. Employers' Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 864 SSID Title XVI | |
| <input type="checkbox"/> 490 Cable/Sat TV | <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 865 RSI (405 (g)) | |
| <input type="checkbox"/> 850 Securities/Commodities/Exchange | <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 345 Marine Product Liability | BANKRUPTCY | FEDERAL TAX SUITS | |
| <input type="checkbox"/> 890 Other Statutory Actions | <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | |
| <input type="checkbox"/> 891 Agricultural Acts | <input type="checkbox"/> 196 Franchise | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | |
| <input type="checkbox"/> 893 Environmental Matters | | <input type="checkbox"/> 360 Other Personal Injury | CIVIL RIGHTS | | |
| <input type="checkbox"/> 895 Freedom of Info. Act | | <input type="checkbox"/> 362 Personal Injury-Med Malpractice | <input type="checkbox"/> 440 Other Civil Rights | | |
| <input type="checkbox"/> 896 Arbitration | | <input type="checkbox"/> 365 Personal Injury-Product Liability | <input type="checkbox"/> 441 Voting | | |
| 899 Admin. Procedures | REAL PROPERTY | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 442 Employment | LABOR | |
| <input type="checkbox"/> Act/Review of Appeal of Agency Decision | <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 443 Housing/Accomodations | <input type="checkbox"/> 710 Fair Labor Standards Act | |
| 950 Constitutionality of State Statutes | <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 369 Rent Lease & Ejectment | <input type="checkbox"/> 445 American with Disabilities-Employment | <input type="checkbox"/> 720 Labor/Mgmt. Relations | |
| | | | <input type="checkbox"/> 446 American with Disabilities-Other | <input type="checkbox"/> 740 Railway Labor Act | |
| | | | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 751 Family and Medical Leave Act | |
| | | | | <input type="checkbox"/> 790 Other Labor Litigation | |
| | | | | <input type="checkbox"/> 791 Employee Ret. Inc. | |
| | | | | <input type="checkbox"/> Security Act | |

FOR OFFICE USE ONLY:

Case Number:

SACV13 - 01659 ABC (DFMx)

CIVIL COVER SHEET

VIM. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?

Yes No

If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.

STATE CASE WAS PENDING IN THE COUNTY OF:

INITIAL DIVISION IN CACD IS:

Los Angeles

Western

Ventura, Santa Barbara, or San Luis Obispo

Western

Orange

Southern

Riverside or San Bernardino

Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action?

Yes No

If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.

If the United States, or one of its agencies or employees, is a party, is it:

INITIAL DIVISION IN CACD IS:

A PLAINTIFF?

A DEFENDANT?

Then check the box below for the county in which the majority of DEFENDANTS reside.

Then check the box below for the county in which the majority of PLAINTIFFS reside.

Los Angeles

Los Angeles

Western

Ventura, Santa Barbara, or San Luis Obispo

Ventura, Santa Barbara, or San Luis Obispo

Western

Orange

Orange

Southern

Riverside or San Bernardino

Riverside or San Bernardino

Eastern

Other

Other

Western

Question C: Location of plaintiffs, defendants, and claims?

A.
Los Angeles
County

B.
Ventura, Santa Barbara, or
San Luis Obispo Counties

C.
Orange County

D.
Riverside or San
Bernardino Counties

E.
Outside the Central
District of California

F.
Other

Indicate the location in which a majority of plaintiffs reside:

Indicate the location in which a majority of defendants reside:

Indicate the location in which a majority of claims arose:

C.I. Is either of the following true? If so, check the one that applies:

2 or more answers in Column C

only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.

Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. 

C.2. Is either of the following true? If so, check the one that applies:

2 or more answers in Column D

only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.

Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. 

Your case will initially be assigned to the
WESTERN DIVISION.

Enter "Western" in response to Question D below.

Question D: Initial Division?

INITIAL DIVISION IN CACD

Enter the initial division determined by Question A, B, or C above: 

SOUTHERN DIVISION



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETIX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

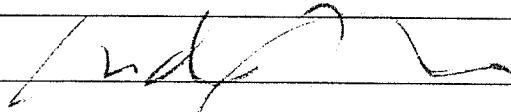
IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): 

DATE: October 23, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g)) |